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August 2, 2022

VIA ELECTRONIC MAIL

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551
regs.comments@federalreserve.gov

RE: Docket No. R-1769; RIN 7100-AG29; Response to Notice of Proposed Rulemaking

Dear Secretary Misback:

I am writing to provide comment on the joint Notice of Proposed Rulemaking (NPR) to amend the Community Reinvestment Act regulatory and supervisory framework. I write on behalf of the Arkansas Access to Justice Foundation, which administers the IOLTA Program in Arkansas. We have provided responses to NPR Questions 31, 32, 47, 48, 117, 118, and 125.

Interest on Lawyer Trust Account (“IOLTA”) programs are present in all fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands. The concept underlying the IOLTA public-private partnership with banks is simple. As part of the oversight system for lawyers, certain types of client and third party funds that cannot be practically invested for the benefit of their owners but which must be held in trust, are maintained in specially designated IOLTA trust accounts at an FDIC or NCUA insured institution that has agreed to participate in a state IOLTA program. The income generated on the pooled funds in IOLTA accounts is used for civil legal aid and other programs that support access to justice for low-income people.

Civil legal aid is a life-line for low-income families facing critical civil legal problems that if unresolved, can multiply and tear families apart, drive them further into poverty, and remove any hope of participating meaningfully in the American economic system. Those receiving civil legal aid include, but are not limited to, families facing a wrongful eviction or foreclosure, people living with disabilities seeking access to Medicaid health insurance benefits, victims of domestic abuse seeking civil protection orders, neglected and abused children harmed by the opioid crisis, as well as seniors who have fallen victim to financial exploitation.



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The availability of these programs to low and moderate-income (LMI) individuals is often directly related to their ability to obtain credit, maintain housing, access federal safety net programs, and sustain employment - all of which are critical to core economic stability and community development. For example, researchers examining civil legal aid in Arkansas found that civil legal aid organizations prevented \$2.2 million in diminished housing values by providing representation in foreclosure cases.¹ Also, by representing survivors of domestic violence, legal aid helped to obviate the need for \$3.9 million in spending on emergency shelter, medical expenses, and social services.²

Financial institutions can assume a leadership role in investing in LMI communities by voluntarily increasing their IOLTA rates above historically low market rates for comparable deposit accounts that would otherwise be applicable to IOLTA accounts. Increasing IOLTA rates beyond the minimum IOLTA participation threshold is an important community development financing activity that results in a direct increase in the funding available for civil legal aid to help LMI families and the communities they live in. For example, an institution with \$50 million in total IOLTA deposits across 200 private attorney IOLTA accounts that changes its IOLTA rate from .20% to .60% could generate an additional \$200,000 annually. This increase could be the difference in an IOLTA program being able to fund an additional 235 eviction foreclosure prevention cases that otherwise couldn't be funded, and these additional cases could make the difference in 235 LMI families being able to stay in safe housing and keep their children in school.³

Question 31: Should the agencies also maintain a non-exhaustive list of activities that do not qualify for CRA consideration as a community development activity?

¹ Cavallari, Devlin, and Tucci, *Justice Measured: An Assessment of the Economic Impact of Civil Legal Aid in Arkansas* (October 2014) at 4, https://arkansasjustice.org/wp-content/uploads/2017/04/AR-Economic-Impact-Study-2014_combined-1.pdf.

² *Id.*

³ The cost per legal aid case varies by jurisdiction and type of representation involved but since these cases are almost always conducted by nonprofit legal aid providers, the cost is substantially less than private attorneys (\$850 as an average cost per case being a reasonable approximation).



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Response: We suggest that the agencies provide a short principles-based list of those activities that do, and do not, qualify for CRA credit. This principles-based list could then be supplemented by an interactive database that is updated frequently with examples of activities that resulted in credit on CRA exams (perhaps pulled and scraped from CRA evaluations conducted in the past). This approach would allow the agencies to provide detailed guidance without creating the risk that a longer list, even one labeled as being non-exhaustive, could nonetheless be treated in practice as a listing of the only possible CRA-qualifying activities. Additionally, this approach allows for greater transparency with respect to new or innovative approaches that have been tried in different parts of the country that resulted in CRA credit, while also providing greater visibility into the results of CRA examinations.

Alternatively, should the agencies decline to go this route and instead proceed with the creation of a more extensive listing of specific activities that do not qualify for CRA consideration as well as a list of those that do, we suggest that any such exclusion list provide a mechanism for a bank or community organization to request an update or change to the list. In some cases, it will take time for regulators to recognize the benefits to LMI individuals and families from innovative CRA financing activities; without a mechanism for removing activities from a do not qualify list, CRA financing advancements could be hindered.

Further, given the nationwide scope of the IOLTA public-private partnership with banks and the direct congruence with the objectives of the CRA served by increasing funding for civil legal aid for LMI families we urge you to ensure that a bank's participation in a state IOLTA program's preferred rate program be included on any listing of activities that qualify for CRA credit.

Question 32: What procedures should the agencies develop for accepting submissions and establishing a timeline for review?

Response: To provide for increased transparency and foster greater innovation, we suggest that the interactive database previously referenced in the response to Question 31, also include: (1) an option for community organizations to upload potential CRA opportunities relevant to certain geographic areas which could be viewed publicly, and; (2) provide an option for banks to either request that the regulators consider a proposal previously uploaded by a community organization for advance consideration (or alternatively request advance consideration of a proposal conceived of by



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the bank that would also be viewable in the public facing database). This approach would allow for community organizations to present novel and innovative CRA opportunities for possible consideration and would also address the agencies' concerns around having to review large numbers of requests from entities which are not regulated banks as only those proposals that were "joined" by banks in the database would be routed to the relevant agency for advance consideration. Lastly, this approach fosters greater transparency as it creates a public record of potential CRA opportunities that either were, or were not, utilized in a given geographic area.

Question 47: The agencies propose to give CRA consideration for community development financing activities that are outside of facility-based assessment areas. What alternative approaches would encourage banks that choose to do so to conduct effective community development activities outside of their facility-based assessment areas? For example, should banks be required to delineate specific geographies where they will focus their outside facility-based assessment area community development financing activity?

Response: The Arkansas Access to Justice Foundation supports the agencies providing CRA consideration for community development financing activities that are outside of facility-based assessment areas.

For example, a financial institution's decision to voluntarily exceed the minimum rate parameters to participate in a state IOLTA program is an investment of additional interest income in IOLTA-funded civil legal aid for LMI individuals residing in the state covered by the IOLTA program. A bank's action in this regard has benefits that are similar to those provided through the low-income housing tax credit (LIHTC) program. While the LIHTC program creates affordable housing for low-income families through the activities of a developer that receives financing to build affordable housing from outside investors that are seeking tax credits, increased investment via the interest rates paid on IOLTA trust accounts used by attorneys practicing throughout a state covered by the IOLTA program benefits LMI individuals receiving civil legal aid.

State IOLTA programs have established programs to recognize banks that voluntarily join preferred interest rate programs, and given the scarcity of funding available for civil legal aid in general, have also developed grant oversight and reporting metrics that are also helpful in the CRA context to show how the additional IOLTA interest provided by banks participating in



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preferred interest rate programs helps civil legal aid and LMI individuals and families.

Accordingly, regulators should allow banks that are able to provide documentation from organizations such as state IOLTA programs that detail the impacted geographies and numbers of LMI individuals assisted to receive CRA credit, regardless of whether the activities being funded are occurring outside of the bank's facility based assessment area.

Question 48: Should all banks have the option to have community development activities outside of facility-based assessment areas considered, including all intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan?

Response: Yes, subject to the parameters described in our response to Question 47, all banks should have the option of community development financing occurring outside of facility-based assessment areas considered for CRA credit.

Question 117: Should activities that cannot be allocated to a specific county or state be considered at the highest level (at the state or institution level, as appropriate) instead of allocated to multiple counties or states based upon the distribution of all low-and moderate-income families across the counties or states?

Response: Yes, the Arkansas Access to Justice Foundation agrees with the approach suggested by the agencies. Specifically, that if a bank is able to provide documentation as to the locations served by a qualifying activity and the funds allocated to each location, the agencies will utilize the location data and amounts provided by the bank. Additionally, if specific location data and corresponding funding data is unavailable, the funds used in the qualifying activity will be allocated across the counties generally served by the bank in proportion to the percentage of LMI families residing in each of the counties served.

Question 118: What methodology should be used to allocate the dollar value of activities to specific counties for activities that serve multiple counties? For example, should the agencies use the distribution of all low-and moderate-income families across the applicable counties? Or, should the agencies use an alternative approach, such as the distribution of the total population across the applicable counties? Should the agencies



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consider other measures that would reflect economic development activities that benefit small businesses and small farms or use a standardized approach to allocate activities?

Response: Assuming that the activities being evaluated all strive to provide relatively equal access to LMI individuals and families across a broader geographic region, then NAIP believes it would be appropriate for the regulators to use the distribution of LMI families to drive the share of dollars applied to each county being served.

Question 125: Considering current data limitations, what approaches would further enhance the clarity and consistency of the proposed approach for assigning community development financing conclusions, such as assigning separate conclusions for the metric and benchmarks component and the impact review component? To calculate an average of the conclusions on the two components, what would be the appropriate weighting for the metric and benchmarks component, and for the impact review component? For instance, should both components be weighted equally, or should the metric and benchmarks be weighted more than impact review component?

Response: The Arkansas Access to Justice Foundation's response to Question 125 is limited to addressing the following community development financing impact review factors suggested by the agencies: (i) activities that are a qualifying grant or contribution; (ii) activities that serve low-income individuals and families, and; (iii) activities that reflect bank leadership through multi-faceted or instrumental support. When examining these three impact factors, the Arkansas Access to Justice Foundation suggests that it would be helpful to the regulators to request that banks obtain documentation from any community organizations involved in those efforts that can help speak to the impact of the activities involved. Specifically, similar to the annual CRA Acknowledgment Reports provided by many state IOLTA programs to banks, this documentation could include: (1) a description of how the grant or leadership activity impacted LMI communities; (2) the number of LMI individuals served; (3) income qualification limits for services, and; (4) a description of the geographic area served.

In the present moment it is clear that the access to justice facilitated by IOLTA-funded civil legal aid has taken on additional urgency. In the words of Nancy Andrew of the Low Income Investment Fund:



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It doesn't matter how many houses we build, how many billions of dollars we invest in transforming communities, how many schools we finance, or child care centers we support or jobs we create. If the people living in these communities wake up in the morning, knowing that society is tilted against them, the power of our work is undone. If the people we set out to help live 24 hours a day, seven days a week uncertain that they can trust society, uncertain they can count on civil institutions, laws, their fellow citizens for fair treatment, our investments are undone. We cannot achieve our mission of poverty alleviation without simultaneously including a focus on the system of laws, rights, institutions and social practices that condemn most of those we work with to second class citizenship and a lack of opportunity.⁴

There is growing awareness that bringing vitality to LMI communities means more than putting up concrete and steel and more than consumer programs and low-cost bank accounts. Access to justice is necessary to help people escape from poverty, and that is precisely what IOLTA programs and civil legal aid offers LMI communities. IOLTA programs and legal services are not an additional way to provide community development, but an essential element in providing meaningful development.

Thank you for the opportunity to comment on this important matter.

Respectfully Yours,

Jordan Bates-Rogers
Executive Director
Arkansas Access to Justice Foundation

⁴ Andrews, Nancy O. (2017) "A Hole in Our Vision: Race, Gender and Justice in Community Development" Federal Reserve Bank of San Francisco Community Development Investment Review, Volume 12(Issue 1), 11, <https://www.frbsf.org/community-development/wp-content/uploads/sites/3/race-gender-justice-in-community-development.pdf>.